



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SR-6J

November 24, 2010

Mr. Donald M. Samson
Trustee, Estate of Chemetco
226 West Main Street, Suite 102
Belleville, Illinois 62220

Re: Reprocessing Operations
Estate of Chemetco Superfund Site, Hartford, Illinois

Dear Mr. Samson:

This letter seeks additional information regarding the progress of the ongoing pilot operations as well as updated information regarding the entities that are or will be planning and undertaking the Trustee's work at the Chemetco Superfund Site (the Site), particularly the reprocessing operations. As anticipated by both the Interim Order between the Bankruptcy Estate of Chemetco (the Estate) and the State of Illinois (the State) and the Asset Purchasing and Processing Agreement between the Estate and Industrial Asset Disposition (IAD), as approved by the Bankruptcy Court, pilot operations preliminary to actual reprocessing of slag and sludges at the Site are ongoing. After the pilot work is completed, reprocessing and other site activities will be subject to a new agreement, in the form of a Consent Decree (CD), to be negotiated with the United States and the State.

However, the listing of Chemetco Superfund Site on the National Priority List (NPL) on March 4, 2010, has changed to some extent the management of the Site. In the normal situation following an NPL listing, the U.S. Environmental Protection Agency, consistent with its authorities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601, and the National Contingency Plan (NCP)¹, would take over an NPL Site, either undertake a Site assessment itself or authorize (or order) one or more potentially responsible parties (PRP) to undertake those actions, select a remedy² for the Site, and either

¹ The NCP is a national plan promulgated by EPA that provides "the organizational structure and procedures for preparing for and responding to . . . releases of hazardous substances." 40 C.F.R. §300.1; see 42 U.S.C. § 9605; *United States v. Hardage*, 982 F.2d 1436, 1442 (10th Cir. 1992).

² See CERCLA Section 101(24), 42 U.S.C. §9601(24): "The terms "remedy or remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes,

undertake the remedy itself or authorize (or order) one or more PRPs to undertake the selected remedial action. However, the presence of IAD and any reprocessing work it conducts could both simplify and complicate EPA's cleanup of the Chemetco Site. To the extent that IAD's reprocessing work is successful and the slag and sludges at the Site are removed by IAD, the cost of EPA's remedial project could be decreased – which would ensure everyone's benefit. However, the presence of IAD and its contractors at the Site will complicate matters because, even though IAD will not be performing either a remedy or a removal³, its operations at the Site can be viewed as being undertaken in support of or coincidental to a remedial action. Further, to the extent that the anticipated Consent Decree grants any protections to the Trustee and IAD as a result of the cleanup actions that they take at the Site, EPA's oversight of such actions may be viewed as being akin to EPA's oversight of PRP cleanup activities. In that regard, the objectives of EPA's oversight of PRP activities are to ensure that the actions being conducted by the PRPs are protective of public health and the environment and comply with any agreement pertaining to the Site⁴.

Construction of the pilot plant was completed in July 2010. Pilot operations include the small-scale, batch-processing plant that is in the former Brick Shop and a laboratory in the north wing of the administrative building. A November 18, 2010, e-mail from Steve Poplawski, counsel for IAD, indicated that the Pilot Plant Summary Report would be submitted to the Illinois Environmental Protection Agency (IEPA) and EPA by the end of the calendar year. As noted in IEPA's October 8, 2010, letter to Elliott Stegin regarding the pilot plant demonstration, this will mark the transition to EPA oversight of reprocessing operations.

Since the inception of this processing effort in August 2009 when numerous companies and personnel were introduced to the Agencies, there seems to have been a significant amount of turnover. We would like to be updated on the roster of companies and individuals currently involved in reprocessing and demolition operations, their roles/positions, and their qualifications to perform their designated tasks.

trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. . . the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

³ See CERCLA Section 101(23), 42 U.S.C. §9601(23): "The terms "remove or removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release"

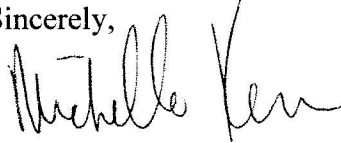
⁴ See e.g., EPA Oversight of Remedial Designs and Remedial Actions Performed by PRPs, EPA/OSWER Publication: 9355.5-01/FS (February 1990): <http://www.epa.gov/superfund/cleanup/rdra.htm> .

Also, please inform us who is designated to keep environmental records for the Site, including specifically who is responsible for recording materials that leave the Site.

Finally, we request from you a proposed schedule for completing and submitting the Slag/Scrubber Sludge Reprocessing Plan, to be attached to the CD, and a proposed timeline to continue and complete discussions between the parties to the CD.

Please contact Tom Martin, Associate Regional Counsel (312-886-4273) or myself (312-886-8961) with questions you may have. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Kerr". The signature is fluid and cursive, with the first name "Michelle" being more prominent than the last name "Kerr".

Michelle Kerr
Remedial Project Manager

Copies via e-mail: Penni Livingston, Esq.
Gregory L. Sukys, Esq., U.S. DOJ
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